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10/036,157	12/26/2001	Tomasz A. Matraszek	83837RLO	3986

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EXAMINER

CUNNINGHAM, GREGORY F

ART UNIT

PAPER NUMBER

2676

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/036,157

Applicant(s)

MATRASZÉK ET AL.

Examiner

Gregory F. Cunningham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-7,9-12 and 27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7,9-12 and 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This action is responsive to communications of amendment received 11/10/2005.
2. The disposition of the claims is as follows: claims 1, 2, 4-7, 9-12 and 27 are pending in the application. Claim 1 is the only independent claim. Claims 3, 8, 13 – 26 and 28 have been cancelled. Claim 29 has been newly added.
3. When making claim amendments, the applicant is encouraged to consider the references in their entireties, including those portions that have not been cited by the examiner and their equivalents as they may most broadly and appropriately apply to any particular anticipated claim amendments.

#### *Claim Rejections - 35 USC § 112*

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- A. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
- B. Regarding claim 6, the phrase "and a like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "and a like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

*Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 6-7, 9-12, 27 and 29 are rejected under 35 U.S.C. 102(e) as being disclosed by Shepard et al. (US 2003/0191682 A1), hereinafter Shepard.

A. Shepard discloses claim 1, [as detailed], “An image file for storing a digital image and information related to the digital image

[(para. 0054) at: Positioning system 118 provides a database that includes a media library and information related to each media within the media library. The media defines the format in which information is captured and populates the database.], including:

a) digital image data

[(para. 0054) at: For example, in one embodiment, the storage device 106 may include a database of still images, video clips, sound clips, virtual reality clips and the like. The information used by positioning system 118 may also be stored as a sequence of bits or information, configured to trigger output devices designed to output or current information. These output devices may include, but not be limited to, those that generate smells, synthesize sounds and produce sensations of taste. Virtual reality output devices are currently being developed by companies such as DIGITAL TECH FRONTIERS that allow users to view, hear and feel the experience of driving a car.

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(para. 0055) at: Also, information from a variety of input devices may be presented or input into the computer and converted to the appropriate format for storage in the database.];

b) a user identifier

[(para 0050) at: In other words, positioning system 118 may be used for creating an ownable identity for a product or company around a set of defined perceptions.

(para 0052) at: By using positioning system 118, a company can quickly react to market situations, shorten the development cycle of marketing and product design programs, and identify demographic, psychographic and technographic trends.

(para. 0099) at: When providing positioning system 118 across a network, positioning system 118 stores information about users who may be polled (e.g., via a virtual focus group). The information may be stored in one of the databases 2306. Positioning system 118 may search the stored information to identify users who should be polled about particular products or companies. Positioning system 118 can also automatically invite the identified users to participate in a poll.]; and

c) affective information which relates to the feelings or emotions of the user identified by the user identifier toward the digital image stored in the image tile

[(para. 0050) at: In one embodiment, a company wanting to create a particular image of being "fun and exciting," for example, may use positioning system 118 for collecting information about what users think is "fun and exciting." Then, positioning system 118 can analyze and process the collected information and provide averages of how consumers rank a particular image, for example. Positioning system 118 can also output or present a desired perception. For example, an image or perception of being "fun and exciting" may be output or

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presented to consumers in a variety of formats such as visual, auditory, olfactory, taste, tactile and experiential.

(para. 0051) at: Positioning system 118 distills signals and messages that are sent by specific visual, auditory, olfactory, taste, tactile, experiential and other sensory perceivable cues. This enables the user to deliver a more precise translation of a desired message or positioning (e.g., image or perception) for a particular brand or product in the marketplace.],

wherein the affective information includes a quantitative value

(para. 0051) at: Positioning system 118 provides qualitative and quantitative information to its users. The information is collected and processed using computers and is consequently much more efficient than human researchers. Moreover, positioning system 118 adds a degree of depth to the information gathered by processing the collected information and analyzing details such as color, composition, tone and context to discover information that is not discernible to human researchers.

which is an importance rating of the digital image

[(para. 0012) at: There is a need for an improved technique to assist a company in managing its perceptions in today's competitive marketplace, to differentiate itself from its competitors and to communicate a meaningful proposition of its products to consumers. There is also a need for a positioning system that provides a set of tools to evaluate the position that a company or brand wishes to own, such as "reliable." Such positioning system then helps to uncover the "ownability" of that position in the market, refine its current position or craft a new position that is "ownable" in the market and true to the values of the company's vision. Furthermore, once an "ownable" position is obtained, there is a need to build a vocabulary of

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cues (visual, auditory, olfactory, taste, tactile and experiential) that can be used to accurately translate the chosen position at each point of contact with consumers.

(para. 0120) at: Referring to FIGS. 15-20, classification information of the outputted particular visual representations 2338 is rated and the ratings are then processed to determine an average rating 2352 for each outputted visual representation 2338. Also, the ratings of the classification information may be processed to identify a ranking of one or more of the outputted visual representations 2338.]”.

Wherein [meaningful proposition] corresponds to “importance”, which communicates via [vocabulary of cues (visual, ...) such that [outputted particular visual representations are rated and processed to identify a ranking] corresponds to “importance rating of the digital image”.

B. Shepard discloses claim 6, “The image file of claim 1 wherein the digital image file includes user identifiers for a plurality of users [see para. 0087, multiple users] and a like plurality of quantitative values, where each quantitative value is an importance rating of the digital image for the associated user” supra for claim 1.

Wherein [identified users] and users that identify with [demographic, psychographic and technographic trends] correspond to a plurality of users. Wherein [meaningful proposition] corresponds to “importance”, which communicates via [vocabulary of cues (visual, auditory, olfactory, taste, tactile and experiential) such that [outputted particular visual representations are rated and processed to identify a ranking] corresponds to “importance rating of the digital image for the associated user”; wherein [classification information of the outputted particular visual representations 2338 is rated and the ratings are then processed to determine an average rating 2352 for each outputted visual representation] corresponds to “and a like plurality of quantitative

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values, where each quantitative value is an importance rating of the digital image for the associated user”.

C. Shepard discloses claim 7, [as detailed], “A method for providing a retrieval scheme for stored digital images, wherein each digital image is stored using a digital image file that corresponds to the image file of claim 6 [supra for claim 6], comprising the steps of:

- a) a retrieval user providing a user identifier;
- b) using the user identifier provided by the retrieval user to select, from the plurality of affective information, the particular affective information associated with the retrieval user; and
- c) using the affective information to facilitate image retrieval”

[(para. 0067) The positioning system's 118 database provides several advantages. First, the database can infer information from one set of sensory stimuli representations by cross-referencing its content with the content and information of other sets of sensory stimuli representations stored in the database. The ability to make inferences allows positioning system 118 to select the categories and the sensory stimuli representations for a spectrum of a specific project. For example, if a project is to develop the perception of being "fun and exciting," positioning system 118 can probe into its database and retrieve sensory stimuli representations that have already been categorized as being "fun and exciting." Then, the retrieved sensory stimuli representations may be output or presented to users for obtaining their responses regarding which of the retrieved sensory stimuli representations they most closely associate with being "fun and exciting." The retrieved sensory stimuli representations may be output together (e.g., as a spectrum or ranking) or may be output separately.]



D. Shepard discloses claim 9, "The method of claim 7 wherein the affective information is used to determine the order of presentation of retrieved images [(parap. 0079) FIG. 6 illustrates a display provided by positioning system 118 for categorizing and ranking sensory stimuli representations. A user is able to place a sensory stimulus representation in a block below the dimension and its opposite by moving (e.g., dragging) the sensory stimulus representation with a pointing device such as a mouse or touch panel display. The user places the sensory stimuli representations in an order 1500 that ranks them from being most representative of an image or perception of being "remote and insincere" to being most representative of an image or perception of being "genuine and approachable."

[0080] In one embodiment of the invention, positioning system 118 outputs to the users several sensory stimuli representations and queries the users to sort the sensory stimuli representations or place them in a linear order (e.g., a sequential ranking). The sensory stimuli representations within the spectrum may be small in size. For some sensory stimuli representations, in which there are many details, this technique may not be useful, as the details may be lost due to the size of the sensory stimuli representations on an output device (e.g., a very small visual image displayed on a monitor). In contrast, with some simple types of sensory stimuli representations, this technique allows users to view all related sensory stimuli representations at once, thus making ranking the sensory stimuli representations easier for the user.]” supra for claim 7 and [as detailed].

E. Shepard discloses claim 10, "The image tile of claim 1 wherein the importance rating is provided by monitoring the facial expression of the user [(0060) For example, as discussed above, the sensory stimuli representations and responses may be stored as visual, auditory,

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olfactory, taste, tactile, experiential, virtual reality and the like, in the form of digital data populating the database. Furthermore, users' responses may be input from a conventional keyboard or mouse, or in the form of speech, iris scanning, fingerprint scanning and other biometrics data such as sensory, biological or biometrics responses from a user as provided by various input devices that are generally well-known in the art.]” supra for claim 1, and [as detailed].

Wherein [other biometrics data such as sensory, biological or biometrics responses from a user] corresponds to “facial expression of the user”.

F. Shepard discloses claim 11, “The image file of claim 1 wherein the importance rating is provided by monitoring the physiology of the user [Furthermore, users' responses may be input from a conventional keyboard or mouse, or in the form of speech, iris scanning, fingerprint scanning and other biometrics data such as sensory, biological or biometrics responses from a user as provided by various input devices that are generally well-known in the art.]” supra for claim 1, and [as detailed].

Wherein [speech, iris scanning, fingerprint scanning and other biometrics data such as sensory, biological or biometrics responses from a user] also corresponds to “physiology of the user”.

G. Shepard discloses claim 12, “The image file of claim 1 wherein the importance rating is provided by a user interface which enables the user to indicate important images [(para. 00430) at: It is envisioned that attached to the computer system 100 may be interfaced with other devices, such as read-only memory (ROM), video card, bus interface, speakers, printers, speech recognition and synthesis devices, virtual reality devices, devices capable of converting a digital

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stream of bits into olfactory stimuli, taste stimuli, tactile stimuli or any other device adapted and configured to interface with the computer system 100 that is capable of providing an output from the computer system of sensory stimuli representations and capable of converting sensory information into a digital format that is recognizable by the computer system 100 and the like.

(para. 0044) at: An example of a company that is developing a technology that allows people to interface with computers using sensory information is NCR CORPORATION.RTM..

NCR.RTM. has developed a prototype allowing Automatic Transaction Machine (ATM) users to transact business with an automatic computerized bank teller machine using biometrics information such as speech recognition and synthesis, iris recognition or retinal scanning technology. These machines may use pressure-sensitive input devices, a keypad touch screen and fingerprint scanning devices, which are well-known to those skilled in the art.]” supra for claim 1, and [as detailed].

H. Shepard discloses claim 27, “The image file of claim 1 wherein the quantitative value is one number selected from a range of possible numbers [para. 0087) As multiple users are separately placing sensory stimuli representations on the perceptual maps 1900, positioning system 118 can take their placement as input to develop a perceptual map 1900 with a calculated "average" placement. This may be done, for example, by averaging the x and y coordinates for each sensory stimulus representation on each perceptual map 1900. For example, the dimensions "genuine and approachable" and "dynamic" may be tested with eight focus groups each completing a perceptual map for those dimensions. Positioning system 118 will calculate the average placement of the sensory stimuli representations from all of the focus groups.]” supra for claim 1, and [as detailed].

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Wherein “average” corresponds to “one number selected from a range of possible numbers”.

J. Per independent claim 29, this is directed to a collection of image files for the image file of independent claim 1, and therefore is rejected to independent claim 1, wherein [database] corresponds to “a collection of image files wherein each stores a different digital image and information related to such digital images”.

*Claim Rejections - 35 USC § 103*

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepard as applied to claim 1 above, and further in view of Boyle et al., (US 2001/0041021 A1), hereinafter Boyle.

A. Shepard discloses claim 2, “The image file of claim 1 wherein the affective information further specifies the time or period within a range of times that the affective information was produced” supra for claim 1.

However, Shepard does not appear to disclose “wherein the affective information further specifies the time or period within a range of times that the affective information was produced”, but Boyle does in [(para. 0039) at: Next, in step 720, the imaging conduit 310 preferably converts the image data into a JPEG format. In step 722, the imaging conduit 310 converts the

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JPEG image into an RGB format before storing the JPEG image in the appropriate folder based on the category of the image. The JPEG image is stored as a file of the name created by the user upon image capture, or by the default name of the date/time stamp.]

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply image file storage disclosed by Shepard in combination with date/time stamp disclosed by Boyle, and motivated to combine the teachings because it would provide a need for a fast and user-friendly conduit for use between a handheld electronic device and a remote storage device to transfer images and other such data and a method for transferring and synchronizing the same as revealed in [para. 0008].

B. Shepard discloses claim 5, “The image file of claim 1 wherein the image data is a JPEG compressed image data” supra for claim 1.

However, Shepard does not appear to disclose “wherein the image data is a JPEG compressed image data”, but Boyle does in [(para. 0039) at: Next, in step 720, the imaging conduit 310 preferably converts the image data into a JPEG format. In step 722, the imaging conduit 310 converts the JPEG image into an RGB format before storing the JPEG image in the appropriate folder based on the category of the image. The JPEG image is stored as a file of the name created by the user upon image capture, or by the default name of the date/time stamp.]

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply image file storage disclosed by Shepard in combination with date/time stamp disclosed by Boyle, and motivated to combine the teachings because it would provide a need for a fast and user-friendly conduit for use between a handheld electronic device

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and a remote storage device to transfer images and other such data and a method for transferring and synchronizing the same as revealed in [para. 0008].

9. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shepard as applied to claim 1 above, and further in view of Szajewski et al., (US 6,222,607 B1), hereinafter Szajewski.

A. Shepard discloses claim 4, “The image file of claim 1 wherein the image tile further includes information related to the capture device used to capture the digital image” supra for claim 1.

However, Shepard does not appear to disclose “wherein the image tile further includes information related to the capture device used to capture the digital image”, but Szajewski does in [col. 3, lns. 39-44 at ‘The present invention further relates to a processing method which comprises the steps of: reading an electronic image bearing file to obtain a digital record of images from the file; identifying an image capture device type of the file; and providing information regarding the image capture device type of the file to a controller.’]

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply image file storage disclosed by Shepard in combination with capture device type disclosed by Szajewski, and motivated to combine the teachings because it would provide for obtaining a digital record of images from an electronic image bearing file supplied to the processing system; an image capture device type identifier which identifies an image capture device type of the file as revealed in [col. 3, lns. 26-31].

*Response to Arguments*

10. Applicant's arguments with respect to claims 1-12 and 27 have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

*Responses*

12. Responses to this action should be mailed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231.

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*Inquiries*

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory F. Cunningham whose telephone number is (571) 272-7784.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Hjerpe can be reached on (571) 272-7691. The Central FAX Number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gregory F. Cunningham  
Examiner  
Art Unit 2676

gfc

2/1/2005



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